

(1919) 01 CAL CK 0003
In the Calcutta High Court

Jogesh Chundra Sanyal

APPELLANT

Vs

Rasik Lal Saha and Others

RESPONDENT

Date of Decision : 06-01-1919

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 8(2)

Land Acquisition Act, 1894 — Section 3(d)

Citation : 50 Ind. Cas. 690

Hon'ble Judges : Teunon, J;Greaves, J

Bench : Division Bench

Judgement

1. These two appeals arise out of certain land acquisition proceedings and involve the question of apportionment.

2. Appeal No. 245 refers to a plot spoken of as plot No. 81. The case of the appellant then was that one Sarna Moyee Debya held this plot No. 81 under him and his predecessor-in-interest and that Sarna Moyee's interest was that of an occupancy Raiyat, The case of the respondents is that Sarna Moyee held this plot as part of what is spoken of as a kaimi jote under a Brahmatoradar of the name of Jadab Adhikari. The appellant's evidence with regard to this plot is extremely meagre.

3. True it is that one of his witnesses, a person of the name of Gedu Mullick, says that Sarua Moyee paid rent to Jogesh's father in respect of this holding; but Jogesh does not himself say so. He produces no counterfoils or collection papers and he does not examine his Tahsildar. On these materials we cannot say that the learned District Judge is wrong in coming to the conclusion that Jogesh has not proved that he has any interest in or connection with this plot.

4. This appeal No. 245, therefore, fails and is dismissed with costs.

5. In the other appeal No, 294 the subject-matter is a plot spoken of as plot No. 21. That admittedly was a holding possessed at one time by a tenant of the

name of Naru. One of the respondents, who was examined as a witness in the case, admits that Nam's holding was held by Naru and by his widow under the appellant Jogesh. He says further that he has since his purchase paid rent to Jogesh Sanyal in respect of Naru's holding. It is admitted that soon after the death of Naru his widow Nali Bewa abandoned this holding and left the village. The respondents allege purchase from her, But there is nothing or practically nothing to show that the interest of Naru in this, holding is higher than that of an occupancy holder. Such holdings are transferable only by custom, and on this record, though there are a few bald statements to the effect that a custom of transferability prevails in the place in question, it cannot be said that any such custom has been made out. Nali Bewa having abandoned the holding, it follows that the appellant Jogesh Sanyal, who is admittedly the landlord, is entitled to the compensation that has been awarded in respect of plot No. 21.

6. This appeal No. 294, therefore, must succeed and is decreed with costs.

7. We assess the hearing fee in each appeal at one gold mohur.

8. We should here, notice that the references out of which these appeals arise were heard by the Additional District Judge of Pabna. It has been contended that the Additional District Judge as such had no jurisdiction to hear those references. We are unable to accede to this contention. u/s 3 of the Land Acquisition Act, Sub-Clause (d), the Court having jurisdiction under that Act is described as "the principal Civil Court of original jurisdiction." Now the Additional District Judge like the District Judge himself is a Judge of that Court, and the cases in question having been made over to him by the District Judge under the provisions of Section 8(2) of the Bengal, N.W.P. and Assam Civil Courts Act, 1887, we are deary of opinion that the Additional District Judge had jurisdiction to hear and dispose of these references.